

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ALABAMA

DELANEY DEVELOPMENT, INC.

\*

\*

\*

VERSUS

\*

CIVIL ACTION NO. 11-500-WS-M

\*

\*

MT. HAWLEY INSURANCE COMPANY \*

and WESTCHESTER SURPLUS LINES \*

INSURANCE COMPANY \*

\*\*\*\*\*

**THIRD AMENDED COMPLAINT**

NOW INTO COURT, through undersigned counsel, comes plaintiff, Delaney Development, Inc., who files this Third Amended Complaint, as follows:

I.

Made plaintiff herein is:

**DELANEY DEVELOPMENT, INC.**, an Alabama corporation organized under the laws of the State of Alabama, with its principal place of business in Alabama.

II.

Made defendants herein are:

**MT. HAWLEY INSURANCE COMPANY**, an Illinois corporation with its principal place of business in Peoria, Illinois, and conducts business in the State of Alabama in this judicial district.

**WESTCHESTER SURPLUS LINES INSURANCE COMPANY**, a Georgia corporation with its principal place of business in Roswell, Georgia, and conducts business in the State of Alabama in this judicial district.

III.

This Court has jurisdiction pursuant to 28 U.S.C. §1332 as the parties' citizenships are completely diverse, and the Plaintiff's claims against each Defendant, individually, exceeds \$75,000.00, exclusive of interest and costs.

IV.

Venue is proper under 28 U.S.C. §1391(a)(2) because a substantial part of the events giving rise to the Plaintiff's claims occurred in Mobile, Alabama within the Southern District of Alabama.

V.

Defendants are justly and truly indebted to Plaintiff herein for damages, together with legal interest thereon from the date of judicial demand until paid, and for costs in these proceedings, for the following, to-wit:

VI.

Plaintiff, Delaney Development, Inc. owns and manages commercial and multi-family residential real estate located in and around the Greater Mobile area.

VII.

Plaintiff contracted with Mt. Hawley Insurance Company (hereinafter "Mt. Hawley") and Westchester Surplus Lines Insurance Company (hereinafter "Westchester") to insure its commercial properties. The Mt. Hawley policy bears policy number MWH 0010082. The Westchester policy bears policy number D35885766-002.

VIII.

In the days preceding Hurricane Katrina's landfall on August 29, 2005, weather forecasters and government officials predicted that Hurricane Katrina, which was then in the Gulf of Mexico, would severely impact southern Alabama.

IX.

On August 29, 2005, Hurricane Katrina made landfall in the greater southern Alabama area. This windstorm severely damaged Plaintiff's commercial properties. Plaintiff mitigated its damages at all relevant times, performing necessary repairs in an attempt to swiftly reopen its commercial properties.

X.

In anticipation of the impending storm, government officials ordered a voluntary evacuation of the greater Mobile area in and around southern Alabama. The voluntary evacuation order applied to everyone, including the Plaintiff. The voluntary evacuation order forced everyone to remain away from the affected area until official notice to return was provided.

XI.

Plaintiff timely notified Mt. Hawley and Westchester of its loss after Hurricane Katrina caused damage to Plaintiff's properties.

XII.

As of the date of the filing of this Complaint and absent evidence to the contrary, Mt. Hawley and/or Westchester have not tendered Delaney Development, Inc. a sufficient amount to adequately compensate Plaintiff for its losses from Hurricane Katrina.

XIII.

At all times pertinent hereto, Mt. Hawley and Westchester provided insurance coverage for the matters, risks, and things involved herein.

XIV.

Plaintiff's commercial insurance policies issued by Mt. Hawley and Westchester provide coverage for loss or damage caused by the peril of wind.

XV.

Despite having been provided with "satisfactory proof of loss," and despite conducting its own thorough investigation of the damage Plaintiff incurred from Hurricane Katrina, Mt. Hawley and/or Westchester have not adequately paid for any or all of the damage sustained to Plaintiff's properties caused by this covered loss.

XVI.

Mt. Hawley and/or Westchester are liable unto Plaintiff under the following legal theories:

- a. Breach of contract;
- b. Breach of duty of good faith and fair dealing; and
- c. Any and all other legal theories which may be found through discovery and proven at trial in this matter.

XVII.

As a result of Mt. Hawley and Westchester's actions, Plaintiff has suffered the following nonexclusive list of damages:

- a. Loss of use of insured property;
- b. Loss of enjoyment of insured property;

- c. Loss of business income;
- d. Loss of movable goods;
- e. Diminution in value of the property;
- f. Permanent repair and remediation expenses;
- g. Temporary repair and remediation expenses;
- h. Attorney's fees;
- i. Costs of this litigation; and
- j. All other losses that will be proven at the trial of this matter.

XVIII.

Plaintiff reserves the right to supplement and amend this Complaint for Damages.

XIX.

Plaintiff prays for trial by jury.

**WHEREFORE**, plaintiff herein, Delaney Development, Inc., prays that the defendants, Mt. Hawley Insurance Company and Westchester Surplus Lines Insurance Company, be served with a copy of this Third Amended Complaint and be duly cited to appear and answer the same, and that after expiration of all legal delays and due proceedings, there be judgment rendered in favor of Plaintiff and against Defendants, in an amount that will fully compensate Plaintiffs for its damages pursuant to the evidence and in accordance with the law; all sums with legal interest thereon from the date of judicial demand until fully paid, for all costs of these proceedings, and for all general and equitable relief.

Respectfully submitted,

/s/C. Bennett Long

C. Bennett Long (ASB-1914-S67L)

2919 8<sup>th</sup> Street

Tuscaloosa, AL 35401

Telephone: (205) 750-4999

Facsimile: (205) 449-6502

Email: bennett@hshptlaw.com

ATTORNEY FOR PLAINTIFFS

**CERTIFICATE**

I hereby certify that on October 12, 2011, a copy of the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system.

/s/C. Bennett Long

C. BENNET LONG